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APPENDIX VI.

[Vide item IV at page 469 supra.]

BILL No. 16 OF 1933.

A Bill to provide for the preservation in efficient condition of tanks belonging to landholders which are used as part of the Periyar System of Irrigation in the Presidency of Madras.

To

THE HONOURABLE THE LEGISLATIVE COUNCIL
OF THE GOVERNOR OF MADRAS.

WE, the Members of the Select Committee appointed to consider the Periyar Irrigation Tanks Preservation Bill (Bill No. 16 of 1933), have the honour to make the following report.

2. The Bill was published in the *Fort St. George Gazette* in English on the 17th October 1933.

3. We met on the 11th November and 19th of December 1933 for the consideration of the provisions of the Bill and on the 5th and 6th January 1934 for passing our report.

4. The object of the Bill is to empower the Government to carry out the repairs necessary to the non-Government tanks used as a part of the Periyar System of irrigation, after affording to the landholder or other persons concerned an opportunity to establish that the repairs proposed are not needed or that less costly measures would suffice. We consider that the provisions of the Bill are conceived on right lines and have not made any material changes in any of the clauses.

5. Clauses 5 to 8 of the Bill provide for the passing of a preliminary order by the Collector specifying the measures which in his opinion are necessary for the repair and restoration to efficiency of any tank which appears to him to be in a state of disrepair, for the preparation of plans and estimates of the cost of such repair, for the service of the order on each landholder affected by the order, for the raising of objections thereto, for the enquiry by the Collector, and for the passing of final orders after such enquiry. We have made suitable amendments which have the effect of ensuring that notice is given to all the persons concerned of the preliminary order of the Collector. With this object, we have provided that along with a vernacular translation of the order which is to be affixed in the village or villages in which

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the tank is situated and in such other villages, if any, as the Collector may think fit, a description in the vernacular of the measures of repair proposed and the estimated cost of carrying them out should also be affixed. We have also made it incumbent upon the Collector to cause intimation of such affixture to be given by beat of drum in each of the villages in which such affixture has been made. We have further provided that in the notice issued to each landholder requiring him to appear before the Collector to show cause why the preliminary order should not be confirmed, a date should be fixed for the appearance of such landholder, which shall be not less than sixty days from the date of the notice.

6. To provide for all possible cases by which a landholder can make out an obligation on the part of another person to carry out the whole or any part of the repairs to a tank situated in his estate, we have for the words "by local custom or express agreement" appearing in clause 6 and elsewhere, substituted the words "by law, local custom or contract."

7. Clauses 5 to 8 have been redrafted so as to make the original intention clearer and so as to incorporate the amendments made by us.

8. We have also made various other drafting changes in the Bill which it is unnecessary to refer to in detail here.

9. As the changes made by us are not of great importance, we do not think it necessary that the Bill should be republished.

10. A copy of the Bill as amended by us is annexed.

K. R. VENKATRAMA AYYAR (*Chairman*).

A. Y. G. CAMPBELL.

N. GOPALSWAMI.

A. KRISHNASWAMY.

J. A. THORNE.

* P. C. MUTHU CHETTI.

G. R. PREMAYYA.

P. V. KRISHNAYYA CHOWDHARY.

T. C. SRINIVASA AYYANGAR.

A. S. ALAGANAN CHETTI.

T. V. K. KAMA RAJA PANDIA NAYAKAR.

(Zamindar of Bodinayakkanur).

R. FOULKES.

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MINUTE OF DISSENT.

I am not satisfied that the Bill is necessary or essential at this stage. The Government has not given any data or information received after the investigation of the matter, which is the object of the Bill. The sudden anxiety for this legislation is not warranted by the experience of 38 years during which period the Periyar project was working and supplying water to the proprietary lands. The provision of the Bill is likely to be a menace to the rights of the proprietary inamdars and its working is sure to be most detrimental to the interests of the proprietors. This Bill will be most injurious to the proprietors inasmuch as they are already suffering from severe provisions contained in the Madras Estates Land Act and the Railway Affected Tanks Protection Act. This legislation will add most injuriously to already overburdened poor proprietors with a further liability.

2. The Select Committee had not sufficient time or data to consider the Bill in all its aspects.

3. The only way, I think, by which the tank might be preserved without working any hardship on the proprietor is to fix the hydraulic standards of the tank as it existed according to the pre-Periyar accounts and to insist on the maintenance of the hydraulic standards so fixed, and the effective way to insist on the maintenance of the tank to that standard would be to insert the appropriate clause to section 135 of the Madras Estates Land Act or chapter VIII of the Madras Estates Land Act as amended recently.

4. The Bill will thus appear to be quite unnecessary and as a matter of fact it is harmful so far as the proprietor is concerned because it enables the Government to collect the contributions from the proprietor for works from which he does not get any return. It is carried out solely for the benefit of the Government. This is rather an extraordinary measure and any legislation to saddle the proprietor with further liability is not justified and is quite inopportune in the present state of affairs.

5. In clause 4 the Collector has been given jurisdiction to try whether an area is comprised in a tank or not. Practical difficulty may arise if the Collector were to summarily decide the question, because the rights of third parties are likely to be affected by an adverse decision

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of the Collector whose decision is, under the Bill, final. The clause has to be modified so that the Collector may proceed to summarily adjudicate upon the question, provided that, right is given to any person aggrieved by the order to contest the decision in a court by a suit filed within six months from the date of the Collector's order. With regard to clause 5 the Collector has been given power to prepare estimates and plans without any reference to the landholder concerned. Such a provision is likely to be abused by the subordinates through whom only the Collector will have to act. It will conduce to allay the fears of the proprietor if it were so framed as to give him an opportunity to inspect and discuss the nature of the repairs to be effected with the Collector or with the engineering staff who is to investigate the matter before making their estimates and plans. Thus to a great extent the question that may arise afterwards might very well be decided by these proceedings to the satisfaction of both the parties if the landholder is allowed to have his say then and there. If the landholder and the Collector do not agree even after such a joint investigation of the affair then the only course which will be just is to have an adjudication by the court. The matters in controversy before the court will cover not only the question of the measures to be adopted, but the court will also have the power to go into the question whether any alternative relief entailing lesser cost would not be sufficient and also the court will be in a position to give a finding on the question which is in my opinion very important, namely, whether the Collector himself is or is not responsible for the condition of the tank by his letting in Periyar water to a greater extent than the tank could bear, in which case I cannot expect the Collector to ask for any proportion of costs from the landholder. Such a reference to a court by means of suit or otherwise might entail delay but that delay can be avoided by having the scope of the suit and the appeal therefrom restricted, that is by making the order of the court final subject only to revision by High Court. I also think that the time given for the landholders to appear, that is 60 days, is too meagre and that at least six months will have to be given. The Collector with all his staff might have taken months and years to prepare his plan but the landholder has to collect the data and make his own investigations handicapped for want of sufficient staff and other

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things necessary for the investigation, and therefore six months will not be too long a period for the landholder to investigate the nature of repairs that are necessary and find out whether the Collector's estimates could be complied with or not. With regard to clause 6, there must be a provision added so that the landholder might put forward any other plea *ejusdem generis* sub-clauses (a) to (d). Clause 7 gives finality to the Collector's order which is objected to. The Collector can never be the final authority to adjudicate in this matter. He must be deemed to be a party. Provisions for a suit in the civil court will be absolutely necessary to safeguard the landholders from the decision of a Collector when the landholder feels bona fide that the decision is erroneous. I cannot think of a case in which the Collector forming his opinion that repairs are necessary will revise it at any future time; but it may very well be imagined that the Collector, will stick to his opinion in the teeth of even very good reasons that might be given by the landholder and the result will be that the Collector might estimate the amount by many times the amount that will be necessary to have the repairs made. This being a vital question affecting the finance, both of the Government and of the proprietors, there must be a decision upon the Collector's order by an impartial tribunal. I suggest that the tribunal should be either a court in rank not below that of the sub-court or a body of respectable people who may be taken as assessors to whom the order may be referred to. Such body may be constituted out of very responsible gentlemen whose qualifications may be mentioned in the Act. Their opinion, i.e., the opinion of the court or of the assessors shall be final in the same way as an order of court under some special Act is final; that is to say, subject only to modifications by the High Court under its powers under the Government of India Act.

6. The court shall have power to enquire into the whole matter either of the necessity for repairs, the cost thereof, the liability for the same, the apportionment of the same and any other matter which is likely to go before it. It is that final decision of the court which is to be accepted by the Collector for executing the repair. No objection can be taken to such a procedure if sufficient safeguards against delay are made in the Act or by rules to be framed under it, i.e., for avoiding unnecessary delay.

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7. Under clause 8 a provision must be made for the Local Government to give notice to the proprietor to contest the decision of the Collector. In clause 8 (ii) the basis of the apportionment of costs between the Collector and the proprietor seems to me to be extremely arbitrary and unjust.

8. Periyar water under the rules framed by the Government had to be let into the proprietor's tank only with the consent of the proprietor. The proprietor's consent in most cases was not taken and Periyar water was let into the tank purely on an application made by the ryots holding dry lands in an estate. Secondly, the proprietors derive no special benefit from the letting of Periyar water into the tanks. Their income from the wet registered ayacut of the tank is not increased owing to cultivation of the same by Periyar water whereas the Government is levying a flat water rate upon every acre of land so cultivated. Therefore the only party benefited by the letting in of Periyar water into the proprietary tank is the Government. This Bill aims at compelling the proprietor to put the tank in order to receive the Government's water or to pay contribution to Government for putting the same in order. Therefore I consider that there is no principle under which the Government can reasonably ask for contribution from the landholder. The Bill is framed recognizing that all these tanks also are part of the Periyar system; what then is the justification for the Government in asking for contribution while in regard to the rest of the system the tanks are repaired at their cost and are maintained by them absolutely without contribution from anybody else? If any contribution is necessary, I suggest 5 to 10 per cent of the total expenses to be paid by the landholder. The landholder might like to pay the same because as the owner of the land he would not like to have his interest lapsed by non-interference while the Government virtually takes possession and uses his tank.

9. The proportion, that is in clause 2 of the Bill appears to have been based upon a misapprehension that the amount received by the landholder as water cess or as representing the value of the water supplied by him from the tank, is the same as the Government receives for the Periyar water supplied by it, which is not the case.

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10. In clause 8 (i) repairs are to be carried out by the Government. It may be that the proprietor himself might be willing to effect the repairs necessary at a much lower cost and that clause may be amended to include such provision also. The Government are not justified in claiming centage charges on works carried out under this Act, since in my opinion they derive the sole benefit of the repairs and also because they are also to a greater extent interested in carrying out the repairs.

11. In clause 10 the proportion of costs to be paid by the landholder is to be recovered in instalments. I suggest that the instalments should be spread over some convenient period and the amount of each instalment be fixed so that it is not more than the difference between the amount received by the landholders as assessment on the wet registered ayacut of the tank and the amount which the landholder would receive if that extent were dry lands. Mr. Hall has also recommended that the instalments have to be determined on this principle—vide page 19; paragraph 41 of his report.

12. Clause 12 is unnecessary and dangerous and that has to be omitted. In view of the various safeguards provided by the Madras Estates Land Act and the Railway Protection Act, and in view of the fact that all these years ever since the introduction of the Periyar system and the storing of water in the proprietor's tanks, there never arose any occasion of any imminent danger of breach, in view of the elaborate and adequate provisions made for the various channels and in the lake itself to prevent over-flooding of the tanks or channels, this provision is unnecessary, but on the other hand it is so drastic that the section can be used to the detriment of the proprietors when there is no imminent danger as the only authority who is to decide it is the Collector himself. It is also likely to lead to unnecessary orders due to imaginary fears and imminent danger of breach which after all might have been based on flimsy grounds.

P. C. MUTHU CHETTIAR.

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[Note.—The changes made by the Select Committee are shown in Clarendon type.]

BILL No. 16 OF 1933.

A Bill to provide for the preservation in efficient condition of tanks belonging to landholders which are used as part of the Periyar system of irrigation in the Presidency of Madras.

(Bill as amended by the Select Committee.)

WHEREAS it is expedient to provide for the preservation in efficient condition of tanks belonging to landholders which are used by the Government as part of the Periyar system of irrigation in the Presidency of Madras:

AND WHEREAS the previous sanction of the Governor-General has been obtained to the passing of this Act:

It is hereby enacted as follows:—

1. This Act may be called the Periyar Irrigation Tanks (Preservation) Act, 1934.

2. It extends to the whole of the Madura district.

3. In this Act, unless there is something repugnant in the subject or context,

(a) 'Collector' means the Collector of the Madura district;

(b) 'estate' and 'landholder' have the same meaning as in the Madras Estates Land Act, 1908; and

(c) 'tank' means any tank situated wholly or partly in an estate and used by the Government as part of the Periyar system of irrigation.

4. If any question arises as to whether any area is or forms part of a tank, it shall be decided by the Collector whose decision shall be final.

5. Whenever it appears to the Collector that any tank is in a state of disrepair, he may pass a preliminary order specifying the measures which in his opinion are necessary for its repair and restoration to efficiency and cause plans and estimates of the cost of such measures to be prepared. The Collector shall

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send copies of such **preliminary order**, plans and estimates to the landholder of the estate in which the tank is situated, or if the tank is situated in **more than** one estate to each landholder concerned, together with **a notice** in writing requiring him to appear before the Collector on a date to be specified in the notice, **not being less than sixty days after the date of the notice**, and show cause why the said order should not be confirmed.

The Collector shall cause a vernacular translation of such order and notice, together with a description in the vernacular of such measures and of the estimated cost of carrying them out to be affixed in some conspicuous place or places in the village or villages in which the tank or its ayacut is situated and in such other villages, if any, as he may think fit and shall cause intimation to be given of such affixture by beat of drum in the village or in each of the villages in which such affixture has been made.

6. On or before the date specified in the notice—

(i) the landholder or any of the landholders concerned may appear before the Collector and raise an objection—

- (a)** that he is not the landholder of any estate in which the tank is wholly or partly situated; or
- (b)** that the tank does not require repair; or
- (c)** that measures other than those proposed would be sufficient for the repair of the tank and its restoration to efficiency; or
- (d)** that by law, local custom or contract any of the measures proposed should be carried out wholly or in part by or at the cost of some other person or persons.

(ii) the holder of any land irrigated by the Periyar system or any other person concerned may appear before the Collector and make such representations as he may think fit with regard to the nature of the measures proposed.

7. On the date specified in the notice or on any subsequent date to which he may adjourn his enquiry, the Collector shall hold such enquiry as he thinks fit, and after such enquiry, shall confirm, cancel or modify

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his preliminary order; and in the last case shall cause to be made such modifications in the plans and estimates as he may find necessary;

Provided that before modifying his preliminary order to the disadvantage of any party who has not appeared, he shall give a reasonable opportunity to such party to appear and show cause why the order should not be modified as proposed;

Provided further that in cases falling under clause (d) of section 6, the Collector shall specify in his final order the extent to which the landholder's liability devolves on the person or persons concerned under the law or local custom or contract and the proportions if any in which each of such persons, if more than one, shall bear such liability.

8. (1) If the Collector confirms or modifies his order under section (5), he shall report the matter to the Local Government who may cause to be carried out the measures specified in the order as confirmed or modified by him.

(2) The total cost of carrying out such measures (including the charges on account of establishment and tools and plant at such percentages on the actual cost of the work done as the Local Government may from time to time prescribe) shall be divided between the Local Government and the landholder or landholders and the other persons concerned, if any, in accordance with the following provisions:—

(a) There shall first be determined the total average area on which, during the three faslis immediately preceding the fasli in which the order under section 5 was issued, the Local Government have levied water-cess for the use of water issuing from the tank otherwise than through its surplus works, whether at the rate prescribed for the irrigation of dry land with Periyar water or at the rate prescribed for the irrigation of wet land in whole inam and zaminadari villages with such water.

(b) Each landholder concerned shall bear such proportion of the said total cost, as one half of the average area of the lands in his

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estate, on which during the said three faslis the Local Government have levied water-cess for the use of water so issuing at the rate prescribed for the irrigation with Periyar water of wet lands in whole inam and zamindari villages, bears to the total average area as determined under clause (a):

Provided that in cases falling under clause (d) of section 6, the liability of the landholder concerned shall, to the extent specified in the Collector's order under section 7, be borne by the persons and in the proportions specified in such order.

(c) The Local Government shall bear the balance of the said total cost.

Illustrations.—1. A tank is wholly situated in the estate of a landholder. **There is no law, local custom or contract** excluding the liability of the landholder. The average area on which water-cess was levied during the three faslis immediately preceding that in which the order under section 5 is issued consists of 50 acres on which water-cess was levied at the rate prescribed for the irrigation of dry lands and 30 acres on which water-cess was levied at the rate prescribed for the irrigation of wet lands in whole inam and zamindari villages. The landholder should bear $\frac{1}{30+50}$ of 30 i.e., $\frac{3}{16}$ of the total cost and the Government should bear the remainder, namely, $\frac{13}{16}$.

2. The facts are the same as in Illustration 1, except that a contract is proved by which the ryots holding the wet lands are bound to bear a share of the cost in proportion to their holding. Twenty acres of the wet lands are held by the ryots and the remaining ten by the landholder. The Government have to bear $\frac{13}{16}$ of the total cost as in Illustration 1, the ryots $\frac{2}{16}$ and the landholder $\frac{1}{16}$.

3. A tank is situated partly in the estate of landholder A and partly in that of landholder B. **There is no law, local custom or contract** excluding the liability of either landholder. The average area on which water-cess was levied during the three faslis immediately preceding, consists of 50 acres on which

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the cess was levied at the rate prescribed for dry lands, 20 acres in the estate of landholder A, on which the cess was levied at the rate prescribed for wet lands in whole inam and zamindari villages, and 10 acres in the estate of landholder B on which the cess was levied at the rate prescribed for such wet lands. Landholder A will bear $\frac{\frac{1}{2} \text{ of } 20}{50+20+10}$ or 2/16 of the total cost, landholder B will bear $\frac{\frac{1}{2} \text{ of } 10}{50+20+10}$ or 1/16 of the total cost and the Government will bear the remainder, namely, 13/16.

4. A tank is situated in the estates of several landholders. During the three faslis immediately preceding, water-cess has been levied on the whole ayacut at the rate prescribed for the irrigation of wet lands in whole inam and zamindari villages. **There is no law, local custom or contract** excluding the liability of any landholder. One-half of the total cost will be borne by the Government and the other half by the several landholders in proportion to the average area lying within their estates on which such water-cess has been levied.

9. After such measures as may have been ordered by the Local Government under section 8 have been carried out, the Collector shall cause to be served upon every landholder or other person concerned, a memorandum showing the total cost of carrying out the same and the portion of such cost for which he is liable under section 8, together with an order directing him to pay the said portion either in a lump sum within a specified time or in specified instalments.

Service of notice on landholder or other person to pay amount of cost due from him.

10. Any amount payable by a landholder or other person under an order under section 9 shall be recoverable as an arrear of land revenue.

Recovery of amount due.

11. (1) Any landholder aggrieved by an order under section 9 served on him may within six months from the date on which such order was served institute a suit in a Civil Court to have such order set aside or modified on any of the following grounds, namely:—

Right of suit of landholder, etc., in certain cases.

(a) that he is not the landholder of any estate in which the tank is wholly or partly situated; or

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- (b) that by **law**, local custom or **contract** any of the measures should have been carried out by, or at the cost of, some other person; or
- (c) that the portion of the cost for which he has been made liable has been wrongly calculated:

Provided that a landholder who has been served with an order, under section 5 shall not be entitled to institute a suit on the ground specified in clause (a) or clause (b), unless he has raised such ground in the proceedings before the Collector under section 6.

(2) Any person other than a landholder aggrieved by an order under section 9 served on him may within six months from the date on which such order was served institute a suit in a Civil Court to have such order set aside or modified on any of the following grounds, namely:—

- (a) that he is not bound to carry out any of the measures by **law**, local custom or **contract**; or
- (b) that the portion of the cost for which he has been made liable has been wrongly calculated.

Provided that no such person shall be entitled to institute a suit on the ground specified in clause (a), unless he has raised such ground in the proceedings referred to in the proviso to section 6 having had a reasonable opportunity to do so.

Procedure
in case of
emergency.

12. Whenever it appears to the Collector that any tank is in such a state of disrepair as to be in imminent danger of breaching, he may by summary order cause to be carried out the measures of repair which in his opinion are necessary to prevent the tank from breaching and shall without delay inform every landholder and other person concerned of the action which he is taking. The provisions of this Act shall thereupon apply as though such repairs had been ordered to be executed by the Local Government under section 8.

Service of
notice or
other docu-
ment.

13. Every notice, **order** or other document required by this Act to be served on or sent to any person, shall, if practicable, be served personally on such person; or,

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if he cannot be found, the notice, **order** or document may be left at his usual or last known place of abode with an adult member of his family or an adult servant or agent, or may be sent by registered post, or may be affixed to some conspicuous part of his usual or last known place of abode and shall thereupon be deemed to have been duly served or sent.

14. The Collector or any officer appointed by him in that behalf may, for the purposes of this Act, at any time, enter upon any land and inspect or cause to be inspected any tank situated therein.

Powers of
entry and
inspection.

